

Testimony supporting HB 50 (anti sanctuary cities) by Paul Nachman, PNBL48@hotmail.com

I live in Bozeman, having moved there in 2005 as a "refugee" from ten years in Redondo Beach, California, where I was immersed in the effects of massive illegal immigration. That's why I'm here today: I want to prevent California-style dysfunction from overwhelming Montana.

On October 21, 2004, the Great Falls Police Department notified the Border Patrol in Havre that an illegal alien who had previously been deported had returned to the Great Falls area. (Illegal re-entry of a previously-deported alien is a felony.) The Border Patrol issued an arrest warrant, and the alien was detained by Billings police in early November. He ultimately admitted being in the U.S. illegally and, in 2005, was sentenced to four years in federal prison.

If Great Falls were an illegal-alien sanctuary city, this couldn't have happened. In a sanctuary city, police have to wait for illegal aliens whom they recognize to commit other, non-immigration crimes before police can arrest them and ask for the feds' help.

The nearest sanctuary city is ... Helena. In December, 2004, their city commission passed Resolution #19181, to protect "the civil liberties of the citizens." Section 4d says that the commission:

Affirms its support of policing currently followed by the City of Helena, including how the City refrains from using city resources to enforce federal immigration laws which are the responsibility of the federal government, except when an alien has been detained or arrested on suspicion of a criminal offense.

The commission apparently didn't know that simply being an illegal alien, if it results from illegal entry or illegal re-entry, is already a crime.

Helena's sanctuary rule follows the model of Los Angeles, the granddaddy of sanctuary cities. Theirs is known as Police Special Order 40, and consider one of its consequences: Trying to build a homicide case against an illegal-alien gang member is often futile since witnesses fear deadly retaliation if they cooperate with the police. In contrast, enforcing against an immigration violation lets the cops lock up the murderer right now, without putting a witness's life at risk. But that's not allowed in LA. Or Helena.

A horrific example of sanctuary cities' consequences made national news in June, 2008. You might remember it. In San Francisco, a man and his two grown sons were returning from a family picnic. The father, who was driving, briefly blocked another car from turning left down a narrow street. After he backed up to let the other car pass, the other driver opened fire, killing the three. This 21-year-old driver and gunman had been in San Francisco Police custody several times for prior crimes, but they hadn't contacted the feds, because SanFran is a sanctuary city.

That may be the most chilling illustration of sanctuary cities "in action," but there are legions of other examples of what HB 50 aims to prevent: Illegal aliens who've previously encountered law enforcement and could have been deported are, instead, left undisturbed to cause lethal accidents or to commit terrible crimes.

But .. do we need to worry about all this in Montana? Well, my opening Great-Falls story came from the 2005 criminal-sentencing report issued by the U.S. Attorney for Montana. I examined those reports for 2005 through 2011 and found that about 11% of 2,100 total sentences were for

immigration crimes, mostly illegal re-entry of previously-deported aliens. So even in "remote" Montana, illegal-immigration cases are a non-trivial fraction of the U.S. Attorney's workload.

Typical estimates have about 5,000 illegal aliens residing in Montana, about 1/2 of one percent of our current population. That's where Georgia was in 1990. Georgians ignored the problem, so now they have about 425,000 illegal aliens. That's 4.4%, a percentage getting up near the percentages for Texas and California. And now Georgians have pitched legislative battles in attempting to address the consequences, which include an annual burden on state taxpayers of about \$2 billion—that's net, after counting the modest taxes illegal aliens pay. And many other states have stories similar to Georgia's. (Current costs to Montana's state budget are about \$30 million/year.)

One advantage of a federal nation is that states can learn from the good and bad experiences of their sister states. But the **big** lesson about illegal immigration—take measures against it before it becomes overwhelming—has largely been ignored, although its effects are out there in plain sight.

British parliamentarian Enoch Powell once said, "The supreme function of statesmanship is to provide against preventable evils." And by just looking at many of our sister states' experiences with illegal immigration, you can see counterexamples of what he meant. So I'm hoping that you'll approach this subject as statesmen, with foresight, instead of sweeping it under the rug and leaving a mess for the next generation of legislators.

Final note: Please look carefully at the bill's language. It doesn't impose new costs or responsibilities on Montana's local governments, nor on their employees. It merely keeps those governments from interfering when their employees, especially police, decide that it would make sense to contact the feds about their encounters with likely immigration-law violators.



Submitted  
by Paul Nachman  
in support of  
HB 50.  
See section 4d  
on page 3.

## RESOLUTIONS OF THE CITY OF HELENA, MONTANA

RESOLUTION NO.

19181

### A RESOLUTION PROTECTING THE CIVIL LIBERTIES OF THE CITIZENS OF THE CITY OF HELENA, MONTANA

WHEREAS, federal, state and local governments should take rational and deliberate steps to protect our society and our freedoms from terrorist attacks such as those that occurred on September 11, 2001; and

WHEREAS, the preservation of civil rights and liberties is essential to the well-being of a democratic society; and

WHEREAS, various federal policies adopted since September 11, 2001, including certain provisions in the USA PATRIOT Act (Public Law 107-56) and related executive orders, regulations, and actions jeopardize fundamental rights and liberties, examples of which include:

1. chilling constitutionally protected speech through overbroad definitions of "domestic terrorism";
2. permitting the FBI to conduct surveillance of religious services, internet chat rooms, political demonstrations, and other public meetings of any kind without having any evidence that a crime has been or may be committed;
3. authorizing the indefinite incarceration of non-citizens based on mere suspicion, and the indefinite incarceration of citizens designated by the President as "enemy combatants" without providing access to counsel or meaningful recourse to the federal courts;
4. limiting the traditional authority of federal courts to curb abuses by law enforcement of electronic surveillance in antiterrorism investigations and ordinary criminal investigations;
5. expanding the authority of federal agents to conduct so-called "sneak and peek" or "black bag" searches in which the subject of the search is unaware that his property has been searched; and
6. granting law enforcement and intelligence agencies broad access to personal medical, financial, education, and library records with little, if any, judicial oversight.

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WHEREAS, many other communities throughout the country have enacted resolutions reaffirming support for civil rights and civil liberties in the face of federal government policies that threaten these values, and demanding accountability from law enforcement agencies regarding their use of these new powers; and

WHEREAS, Helena has a diverse population, including immigrants and students, whose contributions to the community are vital to its economy, culture, and civic character; and

WHEREAS, these new federal powers pose a particular threat to the civil rights and liberties of persons of particular religious, cultural, or ethnic origin; and

WHEREAS, Helena is proud of its long and distinguished tradition of protecting the civil rights and liberties of its residents, and of how the Helena Police Department respects the civil liberties of our population; and

WHEREAS, the Helena City Commission believes that there is no inherent conflict between national security and the preservation of liberty - Americans can be both safe and free; and

WHEREAS, the Helena City Commission does not wish to see the police department put in a position to lose the respect and trust of the citizens of Helena; and

WHEREAS, government security measures that undermine fundamental rights harm the ability of the residents of Helena to participate fully and freely in their community and in the governance of the City.

NOW, THEREFORE, BE IT RESOLVED THAT THE COMMISSION OF THE CITY OF HELENA, MONTANA:


*Section 1. AFFIRMS* its strong support for fundamental constitutional rights and its opposition to federal measures that infringe on human rights and civil liberties;

*Section 2. AFFIRMS* its opposition to secret detention, secret immigration proceedings, detention without access to counsel, and subjection of non-military personnel to military detention;

*Section 3. AFFIRMS* its opposition to measures that single out individuals for legal scrutiny or enforcement activity based solely on their particular religious, cultural or ethnic origins, and therefore affirms its strong support for the rights of immigrants;

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**Section 4. AFFIRMS** its support of policing currently followed by the City of Helena, including how the City:

- a. maintains public records on the names and initial charges of those detained and/or arrested by the City of Helena;
- b. refrains from engaging in the surveillance of individuals or groups of individuals based on their participation in activities protected by the First Amendment, such as political advocacy or the practice of a religion, except when there are reasonable grounds to suspect the subject of the surveillance is or may be involved in criminal activity unrelated to or beyond the activities protected by the First Amendment;
- c. avoids using race, religion, ethnicity or national origin as factors in selecting which individuals to subject to investigatory activities except when seeking to apprehend a specific suspect whose race, religion, ethnicity, or national origin is part of the description of the suspect;
-  { d. refrains from using city resources to enforce federal immigration laws which are the responsibility of the federal government, except when an alien has been detained or arrested on suspicion of a criminal offense;
- e. refrains from collecting or maintaining information about the political, religious, or social views, associations, or activities of any individual, group, association, organization, corporation, business, or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct;
- f. has not established a general surveillance network of video cameras deploying facial recognition technology or other biometric identification technology;
- g. provides notice of the execution of a search warrant simultaneous with the search of the property subject to such a warrant;
- h. encourages citizens to report crime and the observable results of crime, through organizations such as Crimestoppers, but does not recruit members of the general public to spy on their neighbors, colleagues, or customers, such as the proposed federal Operation TIPS; and



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i. refrains from stopping drivers or pedestrians for the purpose of scrutinizing their identification documents without particularized suspicion of criminal activity, except under those limited circumstances specifically authorized by Montana law.

**Section 5. DIRECTS** the City Manager to report to the City Commission at the next regular meeting subsequent to any change in the policing listed in the previous section, as well as any requests by federal authorities that, if granted, would cause agencies of the City of Helena to exercise powers or cooperate in the exercise of powers in apparent violation of those policing practices, of any city ordinance, or of the laws or Constitution of this state;

**Section 6. REQUESTS** that public schools and institutions of higher learning within the City of Helena provide notice to individuals whose education records have been obtained by law enforcement agents pursuant to Section 507 of the USA PATRIOT Act;

**Section 7. REQUESTS** that any public library within the City of Helena post a notice to library uses, in a prominent place within the library, as follows: "WARNING: Under Section 215 of the federal USA PATRIOT Act (Public Law 107-56), records of the books and other materials you borrow from this library may be obtained by federal agents. That federal law prohibits librarians from informing you if records about you have been obtained by federal agents. Questions about this policy should be directed to the United States Attorney General, Department of Justice, Washington, DC 20530";

**Section 8. DIRECTS** the City Manager to seek bi-annually from federal authorities the following information in a form that facilitates an assessment of the effect of federal anti-terrorism efforts on the residents of the City of Helena:

a. the number of all persons who have been arrested or otherwise detained within the City of Helena by federal authorities as a result of terrorism investigations since September 11, 2001; the name of each detainee; the most recent location of each detainee; the circumstances that led to each detention; the charges, if any, lodged against each detainee; and the name of counsel, if any, representing each detainee;

b. the number of search warrants that have been executed in the City of Helena without notice to the subject of each warrant pursuant to Section 213 of the USA PATRIOT Act;

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- c. the extent of electronic surveillance carried out in the City of Helena under powers granted in the USA PATRIOT Act;
- d. the number of instances that federal authorities have monitored political meetings, religious gatherings, or other activities within the City of Helena that are protected by the First Amendment;
- e. the number of times education records have been obtained from public schools and institutions of higher learning in the City of Helena under Section 507 of the USA PATRIOT Act;
- f. the number of times library records have been obtained from libraries in the City of Helena under Section 215 of the USA PATRIOT Act; and
- g. the number of times that records of the books purchased by store patrons have been obtained from bookstores in the City of Helena under Section 215 of the USA PATRIOT Act.

**Section 9. DIRECTS** the City Manager to transmit to the City Commission a summary of the information obtained pursuant to the preceding section and, based on such information and any other relevant information, an assessment of the effect of federal antiterrorism efforts on the residents of the City of Helena, including, within three (3) years, a review of the need for requests made pursuant to the preceding section;

**Section 10. DIRECTS** the City Manager to transmit a copy of this resolution to Senator Baucus, Senator Burns, and Representative Rehberg, accompanied by a letter from the Helena City Commission urging them to monitor federal anti-terrorism tactics and work to repeal or sunset provisions of the USA PATRIOT Act and other laws and regulations that infringe on civil rights and liberties;

**Section 11. DIRECTS** the City Manager to transmit a copy of this resolution to the Governor of Montana, the Montana Attorney General, and all appropriate members of the State Legislature, accompanied by a letter from the Helena City Commission urging them to ensure that state anti-terrorism laws and policies be implemented in a manner that does not infringe on civil liberties as described in this resolution;

**Section 12. DIRECTS** the City Manager to transmit a copy of this resolution to the President of the United States and the United States Attorney General.

#19181

## RESOLUTIONS OF THE CITY OF HELENA, MONTANA

PASSED AND EFFECTIVE BY THE COMMISSION OF THE CITY OF HELENA,

MONTANA, THIS        6        DAY OF        December        , 2004.

/s/  
Mayor James E. Smith

ATTEST:

/s/  
Debbie Havens  
Clerk of Commission



# Statistics on immigration-lawbreaking (primarily illegal immigration) in Montana, 2005 - 2011

Year ==>	2005	2006	2007	2008	2009	2010	2011	Totals
Sentences for immigration violations* [I]	52	40	60	33	25	16	13	239
Total** sentences [T]	308	359	347	315	275	255	252	2,111
Fraction [I ÷ T]	16.9%	11.1%	17.3%	10.5%	9.1%	6.3%	5.2%	11.3%

\* The numbers of sentences for immigration violations include all cases in the category "Illegal Aliens and Immigration Offenses" plus a few cases listed in other categories (primarily "Drugs") that also mention immigration violations.

A high percentage of the sentences in this category are for the felony offense of illegal re-entry by a previously-deported alien (8 USC 1325 and 1326). Listed sentences range from a few months' incarceration (time already served in some cases) to eight years.

\*\* The numbers for total sentences omit "Indian Country" cases that aren't intrinsically federal crimes and that wouldn't be handled by the U.S. Attorney except for the fact that the incidents happened on Indian reservations. (Examples: Burglary, assault manslaughter.)

Source: Examination by Paul Nachman (Bozeman, PNB48@hotmail.com) of annual reports from the U.S. Attorney for Montana, public information emailed to me in September, 2012 as PDF and WordPerfect files by Ms. Jessica Fehr, Assistant U.S. Attorney in the Billings office.